

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY SUVA PRIORITY
AMEMBASSY PORT MORESBY PRIORITY
AMEMBASSY TOKYO PRIORITY
AMEMBASSY CANBERRA PRIORITY
AMEMBASSY WELLIN
HICOMTERPACIS PRIORITY

C O N F I D E N T I A L STATE 153803

HICOMTERPACIS PASS LNO STATUS

E.O. 11652: GDS

TAGS: EFIS, XP, PLOS

SUBJECT: SOUTH PACIFIC REGIONAL FISHERIES ORGANIZATION--
SUVA NEGOTIATIONS

1. AS REPORTED SEPTEL, JUNE 5-10 SPRFO NEGOTIATING ROUND
RESULTED IN CONSENSUS DRAFT TREATY, WHICH IS BEING REFERRED
TO GOVERNMENTS FOR FAVORABLE CONSIDERATION. THE PURPOSE
OF THIS CABLE IS TO PROVIDE A MORE DETAILED REPORT ON THOSE
NEGOTIATIONS AND TO OUTLINE FURTHER STEPS REQUIRED TO
DEFINITELY ESTABLISH THE SPRFO.
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2. AS DEPARTMENT AND EMBASSIES ANTICIPATED IN PRE-MEETING

ANALYSES, THE KEY ISSUE AT SUVA WAS THE QUESTION OF USG
PARTICIPATION. FOLLOWING THE ELECTION OF PAUL COTTON AS
CHAIRMAN OF THE CONFERENCE, IT WAS DECIDED TO BEGIN THE
MEETING WITH A REPORT ON THE APIA MINI-FORUM. WESTERN
SAMOA IMMEDIATELY TOOK THE FLOOR AND OUTLINED THEIR UNDER-
STANDING THAT A APIA IT HAD BEEN DEFINITELY DECIDED TO
SEEK, IF POSSIBLE, AN ACCOMMODATION WHICH WOULD ALLOW THE
U.S. TO PARTICIPATE IN SPRFO. THEY PRESENTED THIS AS A

CONSENSUS VIEW AND STATED THAT IT INCLUDED ALL GOVERNMENTS PRESENT, INCLUDING PAPUA-NEW GUINEA (PNG). OTHER SPEAKERS ECHOED THE SAMOAN VIEW AND PNG, ALTHOUGH SOMEWHAT LESS ENTHUSIASTIC THAN THE OTHERS, AGREED THAT THIS WAS THE

CASE. PNG DID, HOWEVER, NOTE THAT THE APIA MEETING WAS NOT A FULL FORUM SESSION AND THAT THEREFORE IT IN NO WAY CHANGED PREVIOUS POLITICAL GUIDANCE CONTAINED IN THE PORT MORESBY DECLARATION.

3. AS THE NEGOTIATIONS MOVED INTO SUBSTANTIVE DISCUSSIONS, IT BECAME APPARENT THAT THE PNG DELEGATION WAS ADHERING TO ITS ORIGINAL POSITION, REFLECTING PNG'S VIEWS AS TO MEANING OF PORT MORESBY DECLARATION, ARGUING THAT USG PARTICIPATION IN SPRFO COULD ONLY BE ACHIEVED IF THE U.S. ACCEPTED IN PRINCIPLE COASTAL STATE JURISDICTION OVER TUNA. AFTER SEVERAL HOURS OF NON-PRODUCTIVE NEGOTIATIONS, THE DIRECTOR OF SPEC, MAHE, ASKED FOR THE FLOOR AND MADE A VERY STRONG STATEMENT, THE ESSENCE OF WHICH WAS THAT THE APIA MEETING HAD IN FACT CHANGED THE POLITICAL GUIDANCE IN THE PORT MORESBY DECLARATION, AND THAT ALL DELEGATIONS HAD BEEN DIRECTED TO FIND AN ACCOMMODATION WHICH PERMITTED CONFIDENTIAL

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U.S. PARTICIPATION. THIS TO HIM IMPLIED THAT BOTH SIDES HAD TO "GIVE" IN THEIR POSITION. HE VOICED THE PERSONAL OPINION THAT THE U.S. HAD ALREADY COME SUFFICIENTLY FAR TO ENABLE THE CONFERENCE TO SUCCEED. HIS INFERENCE WAS THAT PNG WAS NOW REQUIRED TO MAKE A SIMILAR MOVE.

4. TO COUNTER MAHE'S STRONG AND OBVIOUSLY INFLUENTIAL STATEMENT, THE PNG DELEGATION REQUESTED THAT THE CONFERENCE BE RECESSED AND THAT A SEPARATE COMMITTEE COMPOSED ONLY OF LEGAL ADVISORS BE CONVENED SO THAT "THE SMALLER DELEGATIONS COULD MORE FULLY UNDERSTAND USG'S JURISDICTIONAL POSITION." PRIVATELY, THE PNG DELEGATION ADMITTED TO US THAT THEY HOPED TO USE THIS FORUM TO POINT OUT TO "THE OTHER DELEGATIONS" THAT THE USG'S LEGAL PROBLEMS WERE INSURMOUNTABLE IF COASTAL NATIONS WERE TO OBTAIN THEIR CLAIMED SOVEREIGN RIGHTS OVER TUNA. THE U.S. OPPOSED THE PNG SUGGESTION, AND INDICATED THAT THE U.S. DEL WAS FULLY PREPARED TO ANSWER ANY AND ALL QUESTIONS IN PLENARY. SINCE THERE WAS NO CONSENSUS VIEW, THE CHAIRMAN DECIDED TO PROCEED IN PLENARY AND FOR SEVERAL HOURS THE GROUP DISCUSSED THE INTRACACIES OF U.S. LAW AND HOW IT MIGHT BE OVERCOME THROUGH A PROPERLY INSTITUTED SPRFO. FOLLOWING THIS DISCUSSION, WHICH GAVE THE U.S. AN OPPORTUNITY TO REPEAT AGAIN THE POSITIONS OUTLINED DURING THE RECENT FISHERIES TEAM VISITS, PNG AGAIN INSISTED THAT A LAWYER'S GROUP BE FORMED, WHICH WAS AGREED.

5. DURING THE LEGAL WORKING GROUP SESSION, THE U.S. DEL

TOOK A POSITION THAT THE COMPLEXITIES OF THE LAW, BOTH INTERNATIONAL AND DOMESTIC, WERE SUCH THAT A VARIETY OF CATASTROPHIC HYPOTHETICAL SITUATIONS COULD BE CONSTRUCTED

BY LEGAL ADVISORS. HOWEVER, WE SAW THE ISSUES AS POLITICAL, AND COULD SIMILARLY CONSTRUCT HYPOTHETICAL SITUATIONS WHERE ACCOMMODATIONS COULD EASILY BE REACHED AND THE CATASTROPHIC PROBLEMS FORESEEN BY PNG OVERCOME. DURING
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THE NEXT MEETING OF THE PLENARY, A NUMBER OF THE SMALLER ISLAND DELEGATIONS STATED THAT THEY WERE SATISFIED WITH THE EXPLANATIONS OFFERED BY THE U.S. AND THAT THEY WERE FULLY PREPARED TO MOVE FORWARD WITH AN ACCOMMODATION, ADDING THAT IT WAS NO LONGER NECESSARY TO ADHERE STRICTLY TO THE PORT MORESBY DECLARATION. THE MOST PERSUASIVE ARGUMENT FOR U.S. PARTICIPATION SEEMED TO BE THAT WITHIN SPFRO THERE WAS A CHANCE TO WORK MATTERS OUT WITH U.S. INTERESTS, BUT IF USG WAS EXCLUDED NO SUCH OPPORTUNITY EXISTED. IF MATTERS COULD NOT BE WORKED OUT WITH U.S. INTERESTS WITHIN SPFRO, EVERYONE WAS NO WORSE OFF FOR HAVING MADE THEEFFORT.

6. AT THIS POINT, THE CHAIRMAN RECESSED THE CONFERENCE TO ENABLE THE FORUM COUNTRIES TO MEET PRIVATELY. ALTHOUGH WE NEVER RECEIVED A DEFINITIVE REPORT AS TO WHAT OCCURRED IN THE SUBSEQUENT MEETINGS, WE UNDERSTAND THAT THEY WERE BLOODY INDEED. PNG FISHERIES ADVIOR WILSON APPARENTLY PRESENTED THEIR TWO-ORGANIZATION PROPOSAL IN A MANNER WHICH TOTALLY CONFUSED MOST DELEGATES, AND PNG POSITION ON U.S. LEGAL DIFFICULTIES WAS DESCRIBED AS INTRACTABLE. THAT EVENING, DIRECTOR MAHE CONVENED SMALL HEAD OF DELEGATION MEETING DESCRIBED IN SUVA 974.

WHEN THE CONFERENCE RECONVENED, THE FORUM COUNTRIES OFFERED TWO ALTERNATIVES: ONE, A PROPOSAL FOR A FLAT STATEMENT OF COASTAL STATE JURISDICTION OVER TUNA ACCOMPANIED BY U.S. RESERVATIONS TO THAT ARTICLE, WAS OBVIOUSLY A PNG PROPOSAL; THE OTHER, NEGOTIATION OF A TREATY WHICH CONTAINED NO MENTION OF COASTAL STATE JURISDICTION WITH EACH COUNTRY SIMPLY RELYING ON ITS OWN NATIONAL WILL TO ASSERT SUCH RIGHTS, WAS APPARENTLY A NEW ZEALAND SUGGESTION. THE U.S. STATED DIFFICULTIES WITH THE RESERVATION CONCEPT, AND INDICATED THAT THE SECOND ALTERNATIVE COULD
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OFFER A SOLUTION TO THE ISSUE. THERE THEN FOLLOWED A CHORUS OF ACCEPTANCE OF THE SECOND ALTERNATIVE. WHEN THE SOLOMON ISLANDS INDICATED THEIR ACCEPTANCE, THE PNG DELEGATION APPEARED TO BE TOTALLY ISOLATED.

7. AT THIS POINT IN THE NEGOTIATIONS, THE U.S. DEL WAS VERY CONCERNED THAT WE HAD NOT ARRIVED AT AN ACCOMMODATION WHICH THE PNG COULD ALSO ACCEPT. WE STATED THIS VIEW PRIVATELY TO THE CHAIRMAN WHO CONCURRED. ALTHOUGH THE WESTERN SAMOAN DEL ADVISED AGAINST IT, THE U.S. BEGAN INFORMAL BILATERAL DISCUSSIONS WITH PNG TO ATTEMPT A COMPROMISE. AFTER A SERIES OF MEETINGS, PROPOSALS AND

COUNTER-PROPOSALS, THE U.S. FINALLY PRESENTED TO THE CONFERENCE A PROPOSAL FOR JURISDICTIONAL ARTICLE WHICH WAS ACCEPTABLE TO BOTH USG AND PNG DELS. THIS COMPROMISE PROPOSAL WAS INCORPORATED INTO THE TREATY AS ARTICLE II. ESSENTIALLY, IT IS A METHOD FOR SIMPLY ENABLING STATES TO REGISTER WITH THE SPFRD THEIR OWN JURIDICAL VIEWS, AND ALSO INCLUDES A BINDING COMMITMENT FOR THE PARTIES TO ATTEMPT TO COOPERATE IN SUCH A WAY THAT THE "OPT OUT" PROVISIONS CONTAINED IN ARTICLE XII OF THE PREVIOUS DRAFT ARE NOT INVOKED.

8. ONCE THE JURIDICAL ISSUE HAD BEEN RESOLVED BETWEEN

THE U.S. AND THE PNG, A PECULIAR DYNAMIC APPEARED TO TAKE PLACE. IT SEEMED THE PNG, HAVING DECIDED THAT IT COULD NOT PRECLUDE U.S. PARTICIPATION IN THE SPFRD OR CREATE THE TYPE OF ORGANIZATION IT HAD ORIGINALLY ENVISAGED, DECIDED TO TRY AND ESTABLISH THE SPFRD AS A TRULY EFFECTIVE REGIONAL COOPERATIVE BODY. THEIR POSITIONS ON MOST ISSUES FROM THAT MOMENT ON CLOSELY PARALLELED THOSE OF THE U.S. THE ISSUE OF THE GEOGRAPHIC COVERAGE OF THE ORGANIZATION WAS RESOLVED IN SHORT ORDER AS THE CONFERENCE ACCEPTED A GENERAL FORMULA PROPOSED BY AUSTRALIA. CONFIDENTIAL

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PNG AGREED THAT OLD ARTICLE XII, WHICH DESCRIBES THE FUNCTIONING OF THE ORGANIZATION, NEED NOT BE CHANGED. A FIJIAN PROPOSAL FOR ESTABLISHMENT OF A HIGHLY MIGRATORY SPECIES COMMITTEE WHICH WOULD BE OPEN TO PARTICIPATION IMMEDIATELY BY NATIONS SUCH AS JAPAN AND KOREA WAS ACCEPTED BY THE CONFERENCE. DURING DISCUSSIONS OF THIS ARTICLE, BOTH PNG AND FIJI EXPRESSED THE VIEW THAT THE MECHANISM MIGHT BE USED AS A "STEPPING STONE" TO FULL PARTICIPATION IN THE CONFERENCE BY THESE NATIONS. A U.S. PROPOSAL TO GIVE THE HIGHLY MIGRATORY SPECIES COMMITTEE COMPETENCE TO INVESTIGATE MARINE MAMMAL (TUNA/PORPOISE) PROBLEMS WAS ACCEPTED WITH VIRTUALLY NO DISCUSSION.

9. A KEY ISSUE WHICH WAS EXTENSIVELY DEBATED WAS THE QUESTION OF VOTING RIGHTS FOR DEPENDENT TERRITORIES. AS REPORTED SEPTEL, THIS ISSUE WAS RESOLVED BY GOING TO A CONSENSUS-VOTING FORMULA, WHICH WAS THE U.S. PREFERRED POSITION IN ANY EVENT. FINALLY, DURING DISCUSSIONS OF MEMBERSHIP CRITERIA, PNG TOOK THE POSITION THAT SINCE THE

ORGANIZATION WAS GOING TO FUNCTION AS A COOPERATIVE BODY SUCH AS THAT DESCRIBED IN ARTICLE 64 OF ICNT AND NOT A "COMMON INTEREST BODY," THEY BELIEVED THAT INDONESIA AND THE PHILIPPINES SHOULD BE IMMEDIATELY ELIGIBLE TO BECOME PARTIES, AND THAT CONSIDERATION SHOULD BE GIVEN TO EVENTUALLY INCLUDING DISTANT WATER FISHERS AS WELL. A U.S. PROPOSAL FOR INCLUSION OF AN ARTICLE WHICH WOULD

ALLOW NEW MEMBERS TO BE ADMITTED ON A TWO-THIRDS VOTE OF THE CONFERENCE WAS ACCEPTED QUICKLY.

10. PORT MORESBY 888 WAS RECEIVED DURING PREPARATION OF THIS CABLE. THE FOREGOING SHOULD PROVIDE SUFFICIENT DETAIL FOR EMBASSY TO ENGAGE IN MEANINGFUL DISCUSSIONS
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WITH COUNTERPARTS, ALTHOUGH WE DO NOT BELIEVE WE SHOULD "DEBATE" RESULTS WITH FOREIGN OFFICIALS. THE FULL TEXT OF THE DRAFT CONVENTION IS BEING FORWARDED SEPTEL. AS REGARDS AUSTRALIAN VIEW THAT SPFO IS ONLY AN UMBRELLA AGREEMENT, WE BELIEVE THAT IS CORRECT. THE AGREEMENT DOES NOT ADDRESS ISSUES SUCH AS ACCESS, LICENSING, FEES, OR CONSERVATION REGULATIONS. HOWEVER, AGREEMENTS OF THIS TYPE SELDOM DO. THESE ARE DYNAMIC ISSUES WHICH ARE DECIDED ON A YEARLY BASIS BY THE CONFERENCE ITSELF. IT REMAINS TO BE SEEN WHETHER THE PARTIES CAN ACCOMMODATE THEIR POSITION IN ORDER TO MAKE THE SPFO AN EFFECTIVE OPERATION. AS WE HAVE STATED REPEATEDLY TO VARIOUS GOVERNMENTS, THERE ARE OBVIOUS DIFFERENCES OF VIEW AS TO HOW THE ORGANIZATION WILL OPERATE AND WHAT IT WILL DO. THESE WILL PLAY OUT OVER TIME, AND HOPEFULLY WILL RESULT IN AN EFFECTIVE SPFO. THE PURPOSE OF THESE NEGOTIATIONS WAS TO ESTABLISH AN ORGANIZATION WITHIN WHICH THE VARIOUS GOVERNMENTS CAN NEGOTIATE THESE MATTERS OUT. THIS CONVENTION DOES NOT SOLVE THE PROBLEM, IT ONLY GIVES US A MECHANISM THROUGH WHICH WE CAN SEEK SOLUTIONS. IN U.S. VIEW, LIMITING THESE NEGOTIATIONS TO THAT OBJECTIVE IS ENTIRELY APPROPRIATE AND SHOULD NOT GIVE RISE TO NEGATIVE INTERPRETATIONS OF THE RESULTS.

11. AT THE CLOSE OF THE SUVA CONFERENCE, IT WAS DECIDED THAT THE DRAFT CONVENTION WOULD BE REFERRED TO GOVERNMENTS FOR FAVORABLE CONSIDERATION. THE SOUTH PACIFIC FORUM WILL REVIEW THE DRAFT AT ITS SEPTEMBER MEETING IN NIUE. FOLLOWING THIS MEETING, AND UPON RECEIPT OF THE VIEWS OF THE VARIOUS GOVERNMENTS, THE CONVENTION WILL BE OPENED FOR SIGNATURE. IT IS ANTICIPATED THAT A PLENIPOTENTIARY CONFERENCE WILL BE HELD TO ACCEPT THE CONVENTION AND THAT SIGNATURE COULD TAKE PLACE ON THE SAME DAY. BETWEEN NOW AND SEPTEMBER, THE USG WILL BE CONSULTING WIDELY WITH CONGRESS, THE FISHING INDUSTRY, THE WESTERN PACIFIC COUNCIL, AND THE GOVERNMENTS OF OUR ISLAND TERRI-

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TORIES TO OBTAIN SUPPORT FOR THE DRAFT. WE WOULD HOPE
TO COMMUNICATE TO SPEC PRIOR TO THE SEPTEMBER MEETING OUR
APPROVAL OF THE CONVENTION AND INDICATE THAT WE ARE
PREPARED TO SIGN. PRELIMINARY CONSULTATIONS INDICATE
THAT THE CONVENTION SHOULD BE READILY ACCEPTABLE TO ALL
INTEREST GROUPS. WE WILL ALSO BE REQUESTING EMBASSIES
TO WORK WITH HOST GOVERNMENTS TO COMMUNICATE OUR VIEWS

AND TO BUILD A CONSENSUS AMONG THE VARIOUS COUNTRIES.

12. THE DEPT IS MOST APPRECIATIVE OF THE TREMENDOUS
SUSTAINED EFFORT BY ALL EMBASSIES REGARDING THESE NBGO-
TIATIONS.

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